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United States of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal Case No. 08-CR-0884-H
10)
11 Plaintiff,) DATE: April 21, 2008
12 v.) TIME: 2:00 p.m.
13 JESUS MARROQUIN-FRIAS,) **UNITED STATES' NOTICE OF MOTIONS**
14) **AND MOTIONS FOR:**
15) (1) **FINGERPRINT EXEMPLARS**
) (2) **RECIPROCAL DISCOVERY**

17 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel,
18 Karen P. Hewitt, United States Attorney, and David D. Leshner, Assistant United States Attorney, and
19 hereby files its Motions for Fingerprint Exemplars and Reciprocal Discovery in the above-referenced
20 case. Said motions are based upon the files and records of this case together with the attached
21 memorandum of points and authorities.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I**

3 **STATEMENT OF THE CASE**

4 On March 26, 2008, a one-count indictment was filed charging defendant Jesus Marroquin-Frias
5 with a violation of Title 8, United States Code, Sections 1326(a) and (b). Defendant has not yet been
6 arraigned on the indictment.

7 **II**

8 **STATEMENT OF FACTS**

9 **A. Defendant's Apprehension**

10 On or about January 2, 2008, Defendant was transferred from state custody to federal custody
11 pursuant to a previously-lodged detainer. Federal law enforcement agents interviewed Defendant and
12 ascertained that he was a Mexican citizen unlawfully present in the United States. Agents placed
13 Defendant under arrest and transported him to the Chula Vista Border Patrol Station for processing.

14 At approximately 12:48 p.m. on January 2, agents advised Defendant of his Miranda rights.
15 Defendant agreed to make a statement. According to Defendant, he is a citizen of Mexico without
16 documents allowing him to lawfully enter or remain in the United States. Defendant further stated that
17 he previously had been deported and that he had re-entered the United States on or about July 1, 2007
18 by walking through the mountains near the Tecate, CA Port of Entry.

19 **B. Defendant's Immigration History**

20 Defendant is a citizen of Mexico. On July 2, 1992, Defendant was removed from the United
21 States to Mexico pursuant to an Order of an Immigration Judge. Defendant subsequently was removed
22 from the United States to Mexico on December 2, 1999.

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1 **C. Defendant's Criminal History**

2 Defendant has a lengthy criminal history, including the following convictions:

| CONVICTION DATE | COURT | CHARGE | TERM |
|-----------------|-------------------|---|------------------|
| 2/15/1984 | CASC San Diego | Receipt of Stolen Property (Penal Code § 496.1) | 2 years prison |
| 2/15/1984 | CASC San Diego | Damage to Prison/Jail (Penal Code § 4600) | 16 months prison |
| 1/21/1987 | CASC San Diego | Robbery (Penal Code § 211) | 2 years prison |
| 3/11/1993 | USDC S.D. Cal. | Illegal Entry (8 U.S.C. § 1325) (misdemeanor) | 6 months prison |
| 8/07/1995 | USDC S. D. Cal | Illegal Reentry (8 U.S.C. § 1326) | 63 months prison |
| 11/19/2007 | CASC San Diego | Possession of Controlled Substance (Health & Safety Code § 11377(A)) | 240 days jail |

14 **III**

15 **UNITED STATES' MOTIONS**

16 **A. Motion For Fingerprint Exemplars**

17 The Government requests that the Court order that Defendant make himself available for
 18 fingerprinting by the Government's fingerprint expert. See United States v. Ortiz-Hernandez, 427
 19 F.3d 567, 576-77 (9th Cir. 2005) (Government may have defendant fingerprinted and use criminal
 20 and immigration records in Section 1326 prosecution). Identifying physical characteristics, including
 21 fingerprints, are not testimonial in nature, and the collection and use of such evidence would not violate
 22 Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d
 23 394, 397 (9th Cir. 1969). See also Schmerber v. California, 384 U.S. 757, 761 (1966) (withdrawal
 24 of blood is not testimonial).

25 **B. Motion For Reciprocal Discovery**

26 The Government has and will continue to fully comply with its discovery obligations. To
 27 date, the Government has provided Defendant with 74 pages of discovery and one DVD, including
 28 reports of his arrest, his rap sheet, and copies of immigration and conviction documents.

1 The Government moves the Court to order Defendant to provide all reciprocal discovery to
2 which the United States is entitled under Federal Rules of Criminal Procedure 16(b) and 26.2.
3 Specifically, Rule 16(b)(1) requires Defendant to disclose to the United States all exhibits, documents
4 and reports of testing or examination which Defendant intends to use in his case-in-chief at trial and a
5 written summary of the names, anticipated testimony, and bases for opinions of experts the defendant
6 intends to call at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence.

7 **IV**

8 **CONCLUSION**

9 For the foregoing reasons, the Government respectfully requests that the Court grant its motions.

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11 DATED: March 31, 2008.

Respectfully submitted,

12 Karen P. Hewitt
13 United States Attorney

14 s/ David D. Leshner
15 DAVID D. LESHNER
16 Assistant U.S. Attorney

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Case No. 08-CR-0884-H
Plaintiff,)
v.)
JESUS MARROQUIN-FRIAS,) CERTIFICATE OF SERVICE
Defendant.)

IT IS HEREBY CERTIFIED THAT:

10 I, DAVID D. LESHNER, am a citizen of the United States and am at least eighteen years of age.
11 My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.
12 I am not a party to the above-entitled action. I have caused service of **UNITED STATES**
13 **NOTICE OF MOTIONS AND MOTIONS FOR FINGERPRINT EXEMPLARS AND**
14 **RECIPROCAL DISCOVERY** on the following parties by electronically filing the foregoing with the
15 Clerk of the District Court using its ECF System, which electronically notifies them.

16 || Shaffy Moeel, Esq.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 || Executed on March 31, 2008.

/s/ David D. Leshner
DAVID D. LESHNER